

REMARKS

In the Office Action dated July 19, 2004, claims 7 and 9 were objected to; claims 12-16 and 18-20 were rejected under 35 U.S.C. § 102 over U.S. Patent No. 5,713,024 (Halladay); claims 1-7, 9-11, and 30-32 were rejected under § 103 over Halladay in view of U.S. Patent No. 5,627,964 (Reynolds); claim 8 was rejected under § 103 over Halladay in view of Reynolds and U.S. Patent No. 6,381,694 (Yen); claim 24 was rejected under § 103 over Halladay in view of U.S. Patent No. 4,972,316 (Dixon); claims 25 and 26 were rejected under § 103 over Halladay in view of Reynolds; claims 27, 29, and 33 were rejected under § 103 over Halladay in view of Dixon; and claim 28 was rejected under § 103 over Halladay in view of Dixon and Reynolds.

Claims 7 and 9 have been amended to address the objection. These amendments are to form and do not change the scope of the claims.

Independent claims 12 and 18 were rejected as being anticipated by Halladay. It is respectfully submitted that Halladay does not teach at least the following elements of claim 12: accessing a backup device to enable communication *through a network stack including an Internet Protocol (IP) layer* over a network; and retrieving data through the *network stack including the IP layer over the network*, the data comprising an image containing user data and an operating system. In Halladay, Figure 1 depicts a backup drive 20 connected to a port of the computer 1. *See* Halladay, Fig. 1. There is no indication in Halladay that access of the backup drive 20 is performed through a network stack that includes an IP layer. For at least this reason, Halladay does not anticipate the subject matter of claim 12.

Independent claim 18 is similarly allowable over Halladay.

Claims dependent from independent claims 12 and 18 are allowable for at least the same reasons as corresponding independent claims.

Independent claim 1 was rejected as being obvious over Halladay in view of Reynolds. As conceded by the Office Action, Halladay does not disclose a storage element containing a flag to indicate if a fault has occurred with a first operational element. 7/19/2004 Office Action at 9. However, the Office Action cited Reynolds as teaching such a storage element for storing a flag. Note that the flag recited in claim 1 is very specific: it is a flag to indicate if a fault has occurred with the first operational

element, *and* a backup device enables access of the network through the interface *in response to the flag indicating failure of the first operational element*. Thus, the flag cannot just be any flag that indicates that a fault has occurred – the flag has to indicate if a fault has occurred, *and* a backup device has to be responsive to the flag indicating failure to enable access of a network. Reynolds teaches a special flag that indicates whether fail-safe mode is to be established in response to a previous failure. Reynolds, 6:28-31. However, the special flag of Reynolds is *not* used to cause a backup device to enable access of a network. Thus, even if Halladay and Reynolds can be properly combined, the hypothetical combination of Halladay and Reynolds does not teach or suggest all elements of claim 1. Therefore, a *prima facie* case of obviousness of claim 1 over Halladay and Reynolds has not been established for at least this reason. See M.P.E.P. § 2143 (8th ed., Rev. 2), at 2100-129.

The *prima facie* case of obviousness fails for the additional reason that there existed no motivation or suggestion to combine the teachings of Halladay and Reynolds. Halladay specifically teaches the use of a floppy disk that is specially formatted. Halladay, 7:57-8:19. According to Halladay, a user initiates a cold boot process by loading the cold boot floppy disk into the floppy drive of the computer system. Halladay, 8:22-28. This causes a cold boot application program to be loaded for execution for performing the restoring of data onto the hard drive. However, note that Halladay specifically teaches that a user must load the floppy disk to start the cold boot process. There is absolutely no need to store a special flag in Halladay, as loading the floppy disk itself is the act for starting the restoring process in Halladay.

In other words, there existed absolutely no suggestion of any desirability to incorporate the storage of a special flag to indicate if a fault has occurred with a first operational element, in combination with using the special flag to cause a backup device to enable access of a network through an interface. Therefore, there existed no motivation or suggestion to combine Reynolds with Halladay in the manner proposed by the Office Action.

Moreover, a person of ordinary skill in the art looking to the teachings of Reynolds would not have been motivated to incorporate the fail-safe identifying flag into the system of Halladay. Reynolds is concerned about entering a fail-safe mode based on

the special flag. Reynolds clearly is not concerned about restoring data from a backup device in response to this special flag. In other words, Reynolds provided no suggestion to modify the system of Halladay to start a backup process in response to a special flag to identify that a fault has occurred with an operational element. The *prima facie* case of obviousness is defective for this additional reason.

Withdrawal of the obviousness rejection of claim 1 is respectfully requested. Claims dependent from claim 1 are allowable for at least the same reasons.

Claim 27 has been cancelled, without prejudice, to render the rejection of that claim moot.

Claim 28, which previously depended from claim 27, has been amended from dependent form to independent form. Claim 28 was rejected as being obvious over the asserted combination of Halladay, Dixon, and Reynolds. As conceded by the Office Action, Halladay and Dixon do not disclose the following elements of claim 28: setting a flag in response to a fault, loading a BIOS routine to detect whether the flag is set, and causing the BIOS routine to load a second routine in response to detecting the flag is set. 7/19/2004 Office Action at 26. The Office Action relied upon Reynolds as teaching the missing elements. However, as discussed above, Reynolds teaches setting a special flag to determine whether to enter a fail-safe mode. The special flag is clearly not used for causing the loading of a second routine to retrieve data to recover the system over a network. Thus, a *prima facie* case of obviousness cannot be established with respect to claim 28 because the hypothetical combination of Halladay, Dixon, and Reynolds does not teach or suggest all elements of the claim. Moreover, in view of the fact that there existed no motivation or suggestion to combine Halladay and Reynolds (see arguments with respect to claim 1), no motivation or suggestion existed to combine Halladay, Dixon, and Reynolds. Therefore, withdrawal of the obviousness rejection of claim 28 is respectfully requested.

Independent claim 29 was rejected as being obvious over Halladay and Dixon. However, the asserted combination of Halladay and Dixon does not teach or suggest a network stack including an Internet Protocol (IP) layer, and a backup storage device enabling access over a network through the network stack including the IP layer to retrieve data from a network node to recover the system.

Claim 33, which depends from claim 28, is allowable for at least the same reasons.

In view of the foregoing, all claims are in condition for allowance, which action is respectfully requested. The Commissioner is authorized to charge any additional fees, including extension of time fees, and/or credit any overpayment to Deposit Account No. 20-1504 (MCT.0133US).

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Respectfully submitted,



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